



# Service Contract Act (SCA)



## Service Contract Act Price Adjustment

and

## SCA COMPLIANCE PRINCIPLES (DOL briefing follows)

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Conference  
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## Overview



- **Agency Labor Advisors** ✓
- **Contract Price Adjustment Resources (Air Force)**
- **Contract Price Adjustment due to the Service Contract Act (SCA)**
- **SCA Price Adjustment Elements**
- **SCA Price Adjustment Sample**
- **Questions**



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## Agency Labor Advisors

# Wage Determinations OnLine.gov

Providing public access to federal wage determinations and related information.

WDOL.gov is part of the Integrated Acquisition Environment, one of the E-Government initiatives in the President's Management Agenda. It is a collaborative effort of the Office of Management and Budget, Department of Labor, Department of Defense, General Services Administration, Department of Energy, and Department of Commerce.

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FAQs | User Guide | Help

### Service Contract Act

- Selecting SCA WDs
- e98
- Archived WDs
- WDs due to be revised

### Davis-Bacon Act

- Selecting DBA WDs
- Archived WDs
- WDs due to be revised

### Related Information

- Agency Labor Advisors
- Library
- DOL Wage and Hour Website

## Welcome to the Wage Determinations OnLine Program!

This website provides a single location for federal contracting officers to use in obtaining appropriate Service Contract Act (SCA) and Davis-Bacon Act (DBA) wage determinations (WDs) for each official contract action. The website is available to the general public as well. Guidance in selecting WDs from this website is provided in the WDOL.gov User's Guide.

### News and Updates...

» The DOL has announced the dates for the first in a series of Prevailing Wage Conferences to be held throughout the country at locations within each of their five regions. The first two sessions will be held in Washington in July. Please see their [Information Sheet](#) regarding these

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## Price Adjustment Resources



- AF Labor Advisor Public Website <http://www3.safaqc.hq.af.mil/contracting>

The screenshot shows the homepage of the Air Force Acquisition website. At the top, there's a banner with the text "Air Force Acquisition" and "INTEGRITY". Below the banner, there are navigation links: Home, Contracting, Organizations, and Contracting. A large circular logo for "SAFIAQC AIR FORCE CONTRACTING" is prominently displayed. To the right of the logo, the text "Air Force Contracting" is followed by "Mission: Acquire and support warfig" and "Vision: Agile sourcing through innov professionals who anticipat". On the left side, there are links for Leadership, Strategic Plan, Plan Overview, Contracting Ethics Video | Transcript. At the bottom, there are links for Davis-Bacon Act (DBA) Wage Determinations, Service Contract Act (SCA) Wage Determinations, Desktop Guides, Labor Advisors Directory, Labor Standards Information, Current Newsletter, and Strikees and Dickating.

Home > Fact Sheets > AF Labor Advisors: Desktop Guides

### AF Labor Advisors: Desktop Guides

Posted 8/19/2009

Printable Fact Sheet

- SCA Price Adjustments
- SAF/AQC Memo, 30 Nov 07
- Davis-Bacon Act (DBA), Feb 06
- Service Contract Act (SCA), May 07
- Labor and Affirmative Action, Apr 05
- Price Adjustment, 29 Jul 09



Note: Other agencies have similar Guides. Check with your Agency Labor Advisor

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## SCA Price Adjustment



- What is the Federal Acquisition Regulation (FAR) contractual authority for allowing a Service Contract Act (SCA) labor price adjustment?
  - FAR 52.222-43, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts) (Nov 2006)
    - (a) This clause applies to both contracts subject to **area prevailing wage determinations** and contracts subject to **collective bargaining agreements**.
    - (b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs **for which adjustment is provided under this clause....**

FAR 52.222-43 provides the authority to adjust the contract price for SCA-covered labor; this clause can only be included in firm-fixed price contracts or labor-hour contracts

*Note: highlighting used throughout this briefing is provided for emphasis and does not appear in the actual FAR text*



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## SCA Price Adjustment (cont'd)



- FAR 52.222-43 (cont'd)
  - (d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's **actual increase or decrease** in applicable wages and fringe benefits to the extent that the increase is made **to comply with** or the **decrease is voluntarily made** by the Contractor as a result of:
    - (1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period.

Contractor must provide actual payroll data

Contracting Officer calculates the difference between the amount paid by the Contractor and the new Wage Determination (WD)

The period covered by the adjustment begins with the date the new WD is required by the terms of the contract - not the date of the WD



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## *SCA Price Adjustment (cont'd)*



- Triggered by incorporation of a new wage determination IAW FAR 22.1007 (c)
  - Annual anniversary date/option exercise (for contracts using annual appropriations)
  - Biennial anniversary date if term exceeds 2 years (and not funded or subject to annual appropriations)
  - A new wage determination is generally only incorporated into a contract at these times
    - Just because a new wage determination is available on WDOL.gov does NOT automatically mean it should be incorporated



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## SCA Price Adjustment (cont'd)



- FAR 52.222-43(d)(1) (cont'd)
  - For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour

If the Contractor chooses to pay more than the WD rates, the adjustment is based on what the Contractor ACTUALLY paid--NOT on the previous WD rates

Previous WD hourly rate: \$4.00/hr

Contractor actual: \$4.10/hr

New WD hourly rate: \$4.50/hr

**Adjustment:** **.40/hr** **(4.50/hr - 4.10/hr)**



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## SCA Price Adjustment (*cont'd*)



- What is allowed in the SCA labor price adjustment under FAR 52.222-43?
  - (e) Any adjustment will be limited to increases or decreases in **wages and fringe benefits**..., and the **accompanying** increases or decreases in **social security** and **unemployment taxes** and **workers' compensation insurance**, but shall not otherwise include any amount for **general and administrative costs, overhead, or profit**.

Certain tax increases must "accompany" (be caused by) the WD increase. The clause provides no relief from tax increases from other causes or tax increases on a Contractor's total payroll



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## SCA Price Adjustment (cont'd)



- General calculation of price adjustment
  - New minimum wage and/or Health and Welfare (H&W)
  - Minus (-) actual wage/H&W paid in previous contract period
  - Plus (+) change in payroll taxes and workers comp  
**(on amount of increase, only)**
  - Equals (=) the price adjustment
- Remember: no overhead (OH), general and administrative (G&A) or profit allowed under the authority of FAR 52.222-43(e)

\$15.00	(new wage)
- <u>14.50</u>	(previous wage paid)
.50	(wage increase)
+.08	(H&W increase)
+.12	(change in taxes)
<b>\$ .70/hr</b>	(price adjustment)



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## SCA Price Adjustment (*cont'd*)



- **Two Price Adjustment Methods**

- **Forward Pricing Method**

- Contractor claims an adjustment based on the projected impact of a new or revised WD
- The projection uses the employee hours in the prior contract period factoring in any known or expected changes to contract scope or work force

Most SCA labor price adjustments are done using the Forward Pricing Method

- **Actual Cost Method**

- If the claim has been delayed until after the adjustment period is over, by either an approved extension to the 30-day requirement for filing or by delay in contract modification, the Contractor should use actual employee hours worked as the basis for the claim



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## Price Adjustment Elements



### ▪ Adjustment of wages

- Contractor provides actual wage rate information paid in the previous contract performance period
- Contracting Officer calculates the difference to the new WD rate from the actual rate previously paid by the Contractor (not necessarily the same as the minimum rate required by the previous WD)

FAR 52.222-43(d) (1) specifically states that the Government's adjustment will be based on what the Contractor actually paid (provided it was at least the previous WD's minimum)

Category	Actual Wage Paid by Contractor	Wage on Current WD	Increase
23023 - Env Tech III	\$22.89	\$23.59	.70/hr



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## Price Adjustment Elements (cont'd)



### ▪ Adjustment of Health & Welfare (H&W)

- Contractor may be required to provide data supporting the actual premiums paid in previous period
- If the H&W increase is paid directly to employees, it is considered **taxable wages**. The Contractor will incur an accompanying expense in FICA, WCI and possibly FUTA and SUTA
- **If H&W is paid to a third-party provider, Contractor incurs no increase in payroll taxes so no FICA or WCI adjustment is due on the H&W increase**

FICA and WCI adjustment are due on the H&W amount when H&W is paid directly to the employees.

No FICA or WCI adjustment is due on H&W amount if it is paid into an insurance plan.

Actual H&W Paid by Contractor	H&W on Current WD	Increase
\$3.50/hr	\$3.59/hr	\$.09/hr



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## *Price Adjustment Elements (cont'd)*



### **▪ Adjustment of Vacation**

- A vacation adjustment is only appropriate if the revised WD changed the vacation benefit or entitlement criteria (if, for instance, the old WD stated “one week paid vacation after 1 year of service” and the new WD states “two weeks paid vacation after 1 year of service”)
- No adjustment is permitted merely because an individual employee's seniority has increased his/her entitlement
- Vacation hours required by the WD may be included in the claim (applying the hourly wage and H&W increase to the vacation hours)

*Typical* hours/year:

Productive Hrs:  
1,920

Vacation:	80
Holidays:	80

Vacation required by the WD is found in the notes following the WD classifications (or in the CBA)



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## *Price Adjustment Elements (cont'd)*



### **▪ Adjustment of Holidays**

- When the revised WD increases the number of required holidays, the Contractor may generally claim an adjustment for the increased cost
- The adjustment is the SCA minimum wage rate times the number of increased holiday hours (generally, eight hours per each new holiday for a full-time employee)
- Holiday hours required by the WD may be included in the claim (applying the per hour wage and H&W increase to the holiday hours)

The total number of holidays required by the WD is found in the notes following the WD classifications (or in the CBA)



## Price Adjustment Elements (cont'd)



### ▪ **Adjustment of Unemployment Taxes**

- The Federal Unemployment Tax Act (FUTA) and State Unemployment Tax Act (SUTA) payments are *normally* not affected by a WD revision
- Unemployment taxes are paid by Contractors on wages up to a specific annual ceiling or cap
- The current FUTA rate is only paid on wages up to a cap of \$7,000; Contractors should have included this in their initial offers
- SUTA caps vary by state, but most states use caps under \$20,000. Rates vary by state and by employer.
- SUTA websites can be reached through  
<http://www.americanpayroll.org/members/stateui>



## *Price Adjustment Elements (cont'd)*



### **▪ Adjustment of Unemployment Taxes (cont'd)**

- Since annual employee wages usually exceed the caps **in most states** without regard to the revised WD, typically no additional FUTA or SUTA is required-- the Contractor is already paying the maximum tax
- The contract price is not adjusted for changes in the FUTA or SUTA rate; if an adjustment is warranted, the current rates apply
- Contracting Officer verifies the applicable SUTA rate by requesting suitable documentation from the Contractor or contacting the relevant state employment tax office
- If an adjustment is due, it is only for the FUTA/SUTA percent rate times the wage rate differential



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## *Price Adjustment Elements (cont'd)*



- **No adjustment is allowed on General and Administrative (G&A) costs, overhead and profit**
  - These elements are specifically excluded by FAR 52.222-43(e) and are not allowable as part of an SCA price adjustment
  - Increases in general liability insurance, state gross receipts taxes and bonding costs are also not allowable as part of an SCA adjustment (despite such costs being calculated based on total wages or total revenue)



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## *Price Adjustment Elements (cont'd)*



- **No adjustment is allowed for employee reimbursements**
  - Employee expenses reimbursed by the Contractor, such as payment for fuel, mileage, meals, lodging, tool and uniform allowances and safety shoes, boots or gear, are not considered when calculating the hourly wage rate paid
  - Such payments are considered as reimbursement of a Contractor's business expenses and not wages or fringe benefits
  - These items must be excluded from any calculation for price adjustment under FAR 52.222-43



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## SCA Price Adjustment Sample



### Our SCA Labor Price Adjustment situation :

1. Custodial and grounds maintenance services, fixed price, ABC Clean is the Contractor; location: Grissom ARB, IN
  
2. The wdol.gov wage determination\* for the next option has been incorporated into the contract; it requires wage increases for the classifications used by the Contractor
  
3. The H&W rate also increases from \$3.50 to \$3.59/ hour. The wage determination specifies the 'employee-by-employee" method of compliance \*\* therefore, the \$3.59 is due on all hours **compensated** up to a maximum of 40 h

\*If contract has a CBA WD, use rates found in the current CBA; methodology for doing the price adjustment is the same—just have to verify cost data with CBA rates and benefits (e.g., sick leave, vacation accrual, etc.)

\*\* Currently there are two H&W methods for each location. The alternate WD requires an **average cost** of \$3.59/hr based on all hours **worked** by SCA-covered employees.



## SCA Price Adjustment Sample (cont'd)



4. Per FAR clause 52.222-43, the Contractor makes a claim for the increased cost.
5. ABC Clean provides information which includes (1) each employee's work hours, paid vacation and holiday hours, (2) a "Defense Contract Audit Agency (DCAA) approved" overhead tax rate of 11.65%, (3) the cost of new T-shirts for the employees (the contract required Contractor-identifiable clothing) and (4) employee vehicle mileage reimbursement. The Contractor provided no payroll records.
6. The Contractor claims the increase for the (1) janitors, (2) lead janitor, (3) grounds maintenance laborers, (4) tractor operator, (5) pest controller, (6) payroll clerk, and (7) the project manager. The lead janitor wage rate is not listed on the wage determination and the procedure ("conformance") to establish the minimum SCA wage rate was not completed



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## SCA Price Adjustment Sample (cont'd)



- Step-by-step, what does the Government do to evaluate this claim?
- What increased costs are required of (forced on) the Contractor to comply with the revised SCA wage determination?
- What accompanying costs are permitted by 52.222-43?

### **Step 1:** Eliminate unallowable costs:

- Non-SCA employees: Payroll Clerk and Project Manager
- Non-wage/benefit costs: T-shirts, mileage
- 11.65% “DCAA-approved” tax rate ??



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## SCA Price Adjustment Sample (cont'd)



- Payroll information needed to calculate the SCA labor price adjustment from the previous year to the current year should be provided by the Contractor
- The authority to require this information is provided under FAR 52.222-43(g):
  - “(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.”

### **Step 2:** What additional information is needed to evaluate?

- Payroll records showing actual wages and H&W
- Actual hours worked/paid
- How was H&W paid?
- What is the current workers comp rate?
- Were any employee wages previously less than the FUTA and/or SUTA caps?
- Any other documents needed by the CO to verify the claim



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## SCA Price Adjustment Sample (cont'd)



### Step 3: Calculate:

Title	Hours (2080/yr)	Hourly Wages		Delta/Hr	Total Wage Increase
		Actual Rate Pd (FY10)	WD 05-2195 Rev 7 (FY11)		
Labor, Grounds Maintenance	20,800	\$ 9.50	\$ 10.00	\$ 0.50	\$ 10,400.00
Tractor Operator	2,080	\$ 10.50	\$ 11.75	\$ 1.25	\$ 2,600.00
Pest Controller	2,080	\$ 17.00	\$ 18.15	\$ 1.15	\$ 2,392.00
Janitors	10,400	\$ 9.50	\$ 10.00	\$ .50	\$ 5,200.00
Lead Janitor (1)**	2,080	\$ 10.50	\$ 11.50**	\$ 1.00**	\$ -
<b>Total</b>	<b>37,440</b>	<i>is not legally established thru (c)), therefore, no adjustment</i>			<b>\$ 20,592.00</b>

so there will be no adjustment to the wages (see FAR 52.222.43(d)).



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## SCA Price Adjustment Sample (cont'd)



- As a reminder, it is the Contractor's responsibility to conform a position to the WD (FAR 52.222-41(c) Compensation)

(2)(i) If a wage determination is attached to this contract, **the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract** (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination...

- Referred to as a "conformance"
- Accomplished via SF 1444
- Requires Contractor to conform wage determination within 30 days after the unlisted class of employee performs any contract work
- Contractor submits completed SF1444 (including employee agreement or disagreement) to the Contracting Officer
- Contracting Officer submits SF1444 to the DOL
- DOL approves/disapproves and returns to the Contracting Officer who forwards to the Contractor



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## SCA Price Adjustment Sample (cont'd)



- **FOR THIS EXERCISE:**

- The contractor documents that H&W was paid to a third-party provider
- So, no accompanying costs are due on the H&W increase

**Step 4:** Was health and welfare paid in cash to the employees or paid to a third-party provider?

**If cash:** calculate accompanying costs on H&W total

**If third-party provider:** do not calculate accompanying costs of the H&W total



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## SCA Price Adjustment Sample (cont'd)



Title	Hours (2080/yr)	Hourly Wages		Delta/H r	Total Wage Increase	H&W (\$.09/hr)
		Actual Rate Paid (FY10)	WD 05- 2195 Rev 7 (FY11)			
Labor, Grnds Maint	20,800	\$ 9.50	\$ 10.00	\$ 0.50	\$ 10,400.00	\$ 1,872.00
Tractor Operator	2,080	\$ 10.50	\$ 11.75	\$ 1.25	\$ 2,600.00	\$ 187.20
Pest Controller	2,080	\$ 17.00	\$ 18.15	\$ 1.15	\$ 2,392.00	\$ 187.20
Janitors	10,400	\$ 9.50	\$ 10.00	\$ .50	\$ 5,200.00	\$ 936.00
Lead Janitor**	2,080	\$ 10.50	\$ 11.50**	\$ 1.00**	\$ -	\$ 187.20**
<b>Total</b>	<b>37,440</b>				<b>\$ 20,592.00</b>	<b>\$ 3,369.60</b>

\*\* Although the lead janitor wage rate was not conformed, it is an SCA-covered position, due the minimum H&W.



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## SCA Price Adjustment Sample (cont'd)



### Step 5: Calculate accompanying costs:

- FICA (6.20% for Social Security + 1.45% for Medicare, 7.65% Total)
- Workers Compensation Insurance (Contractor rate = \$4 per \$100 (4%))
- Federal Unemployment Tax Allowance (FUTA) (if applicable)

Title	Hours (2080/yr )	Hourly Wages		Delta/ Hr	Total Wage Increase	H&W (\$.09/hr)	FICA (7.65%)*	WCI (4%)*
		Actual Rate Paid (FY10)	WD 05- 2195 Rev 7 (FY11)					
Labor, Grnds Maint	20,800	\$ 9.50	\$ 10.00	0.50	\$ 10,400.00	\$ 1,872.00	\$ 795.60	\$ 416.00
Tractor Operator	2,080	\$ 10.50	\$ 11.75	1.25	\$ 2,600.00	\$ 187.20	\$ 198.90	\$ 104.00
Pest Controller	2,080	\$ 17.00	\$ 18.15	1.15	\$ 2,392.00	\$ 187.20	\$ 182.99	\$ 95.68
Janitors	10,400	\$ 9.50	\$ 10.00	0.50	\$ 5,200.00	\$ 936.00	\$ 397.80	\$ 208.00
Lead Janitor	2,080	\$ 10.50	\$ 11.50	1.00	\$ -	\$ 187.20	\$ -	\$ -
<b>Total</b>	<b>37,440</b>				<b>\$ 20,592.00</b>	<b>\$ 3,369.60</b>	<b>\$ 1,575.29</b>	<b>\$ 823.68</b>

\*FICA and WCI are not applied to H&W since H&W is paid to an insurance plan and not in cash



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## SCA Price Adjustment Sample (cont'd)



Total SCA labor price adjustment due for the upcoming contract performance period: **\$26,360.57**

Title	Hours (2080/y r)	Hourly Wages		Delta/ Hr	Total Wage Increase	H&W (\$.09/hr)	FICA (7.65%)	WCI (4%)	Amt Due
		Actual Rate Paid (FY10)	WD 05- 2195 Rev 7 (FY11)						
Labor, Grnds Maint	20,800	9.50	10.00	\$ 0.50	\$ 10,400.00	\$ 1,872.00	\$ 795.60	\$ 416.00	\$ 13,483.60
Tractor Operator	2,080	10.50	11.75	\$ 1.25	\$ 2,600.00	\$ 187.20	\$ 198.90	\$ 104.00	\$ 3,090.10
Pest Controller	2,080	17.00	18.15	\$ 1.15	\$ 2,392.00	\$ 187.20	\$ 182.99	\$ 95.68	\$ 2,857.87
Janitors	10,400	9.50	10.00	\$ .50	\$ 5,200.00	\$ 936.00	\$ 397.80	\$ 208.00	\$ 6,741.80
Lead Janitor	2,080	10.50	11.50	\$ 1.00	-	\$ 187.20	\$ -	\$ -	\$ 187.20
<b>Total</b>	<b>37,440</b>				<b>\$20,592.00</b>	<b>\$ 3,369.60</b>	<b>\$ 1,575.29</b>	<b>\$ 823.68</b>	<b>\$ 26,360.57</b>



## Questions

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# SCA Compliance Principles



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Wage and Hour Division



**WHD**  
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# SCA Compliance Principles

- Payment of wages and fringe benefits
- *Bona fide* Fringe Benefit Plans
- Health & Welfare Fringe Benefits
- Paid Vacation Fringe Benefits
- Paid Holiday Fringe Benefits
- Equivalent Fringe Benefits
- Temporary & Part-time employment



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**WHD**  
U.S. Wage and Hour Division

# Payment of Wages (29 C.F.R. § 4.165)

- Wages established by wage determination, otherwise FLSA minimum wage
- Calculated on fixed and regularly recurring workweek of 7 consecutive 24-hour workday periods
  - ✖ Payroll records kept on this basis
  - ✖ Bi-weekly or semi-monthly pay periods if advance notice



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# Payment of Fringe Benefits

- Cash payments in lieu of fringe benefits (FBs) must be paid on regular pay date (29 C.F.R. § 4.165(a))
- Payments into *bona fide* FB plans must be made no less often than quarterly (29 C.F.R. § 4.175(d))
- FB costs may not be credited toward wage requirements (29 C.F.R. § 4.167)



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# Discharging Minimum Wage & Fringe Benefit Obligations

Under SCA, the contractor may not credit excess wage payment against the FB obligation:

Wage Determination: Employee Paid:

Wage	\$10.25	Wage	\$12.00
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<u>FB</u>	<u>\$ 3.59</u>	<u>FB</u>	<u>\$ 1.84</u>
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Total	\$13.84	Total	\$13.84
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Wage and Hour Division



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# Computation of Hours Worked

## (29 C.F.R. §§ 4.178-4.179 & Part 785)

- Determined under the FLSA pursuant to 29 C.F.R. Part 785
- Includes all periods in which employee is “suffered or permitted” to work
- Hours work subject to SCA are those performed on covered contracts
- Must keep affirmative proof of time spent on covered and non-covered work in a workweek



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# Wage Payments for Work Subject to Different Rates

- Employee must be paid -
    - Highest rate for all hours worked, unless
    - Employer's payroll records or other affirmative proof show periods spent in each class of work
  - Applies when employee works part of workweek on SCA-covered and non-SCA-covered work
- 



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**WHD**  
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# Bona Fide Fringe Benefits

## (29 C.F.R. § 4.171(a))

- Constitute a legally enforceable obligation that
    - Is communicated in writing to employees
    - Provides payment of benefits to employees
    - Contains a definite formula for determining amount of contribution and benefits provided
    - Is paid *irrevocably* to an independent trustee or third person pursuant to a fund, trust, or plan
  - Meets criteria set forth by IRS and ERISA
-  U.S. Department of Labor  
Wage and Hour Division
-  U.S. Wage and Hour Division

# Fringe Benefits Plans

## (29 C.F.R. § 4.171(a)(2))

- Provide benefits to employees on account of:
  - Death
  - Disability
  - Advanced age
  - Retirement
  - Illness
  - Medical expenses
  - Hospitalization
  - Supplemental unemployment benefits



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# Health and Welfare (H&W) Fringe Benefits

- Three types of FB requirements:
  - “Fixed cost” per employee benefits
  - “Average cost” benefits
  - Collectively bargained (CBA) benefits
- Types and amounts of benefits and eligibility requirements are contractor’s prerogative



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# “Fixed Cost” Benefits (29 C.F.R. § 4.175(a))

- Increased to \$3.59 per hour June 17, 2011
  - Included in all “invitations for bids” opened, or
  - Other service contracts awarded on or after June 17, 2011

- 
- Required to be paid “per employee” basis



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**For ALL HOURS PAID FOR up to 40**



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# “Fixed cost” H&W Contributions Bi-Weekly Payroll

<u>Employee</u>	<u>Hrs. paid</u>	<u>FB's</u>	<u>Cash</u>	<u>Total</u>
Libby	80	\$180.00	107.20	287.20
Jean	*100	\$180.00	107.20	287.20
Ann	20	0.00	71.80	71.80
Tim	80	\$287.20	0.00	287.20
<u>Tom</u>	<u>60</u>	<u>\$151.00</u>	<u>64.40</u>	<u>215.40</u>
<b>Total</b>	<b>*340</b>		<b>\$1,148.00</b>	

\* FBs and cash payments may vary so long as total equals \$3.59 per hour. 20 hours of overtime excluded.



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# “Average Cost” Benefits

## (29 C.F.R. § 4.175(b))

- Contributions may vary depending upon employee’s marital or employment status
- Total contributions must average at least \$3.59 per hour per employee:
  - Excludes paid leave time and holidays
  - For **all “HOURS WORKED”**
- Compliance determined on a group basis, not an individual basis



# “Average Cost” Benefit Contributions

<u>Employee</u>	<u>Hours Worked</u>	<u>Contributions</u>
Libby	250	\$650
Jean	150	\$450
Ann	250	\$650
Tim	50	0
<u>Tom</u>	<u>100</u>	<u>\$250</u>
Total	800	\$2000

$\$2000/800 = \$2.50$  average FB contributions



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# “Average Cost” Benefits Contributions

<u>Employee</u>	<u>Hours</u>	<u>Shortfall</u>	<u>Total</u>
Libby	250	\$1.09	\$272.50
Jean	150	\$1.09	\$163.50
Ann	250	\$1.09	\$272.50
Tim	50	\$1.09	\$ 54.50
<u>Tom</u>	<u>100</u>	<u>\$1.09</u>	<u>\$109.00</u>
Total	800		\$872.00

$$\$2000 + \$872 = \$2872/800 \text{ hours} = \$3.59$$



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# H&W Footnotes (Determine Compliance)

- Prevailing WDs provide H&W footnote
- All occupations listed on WD receive benefits as specified
- “Fixed cost” H&W footnote
  - Single line specifying hourly, weekly, and monthly contribution amounts
  - Specified on odd numbered WDs

*“\$3.59 an hour or \$143.60 a week or \$622.27 a month”*

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## H&W Footnotes (Cont'd)

- “Average Cost” H&W footnote - brief paragraph listing types of benefits and hourly contribution and specified on even numbered WDs

*“HEALTH & WELFARE: Life, accident, and health insurance plans, sick leave, pension plans, civic and personal leave, severance pay, and savings and thrift plans. Minimum employer contributions must cost an average of \$3.59 per hour computed on the basis of all hours worked by service employees employed on the contract.”*



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# Collectively Bargained Benefits Fringe

- Based on CBA
- Required to be paid by successor contractor under section 4(c) of SCA
- Need not provide specifically the FBs stipulated in CBA. Equivalent benefits may be provided
- Cash equivalent payments can be used to offset the FBs due



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# Vacation Fringe Benefits

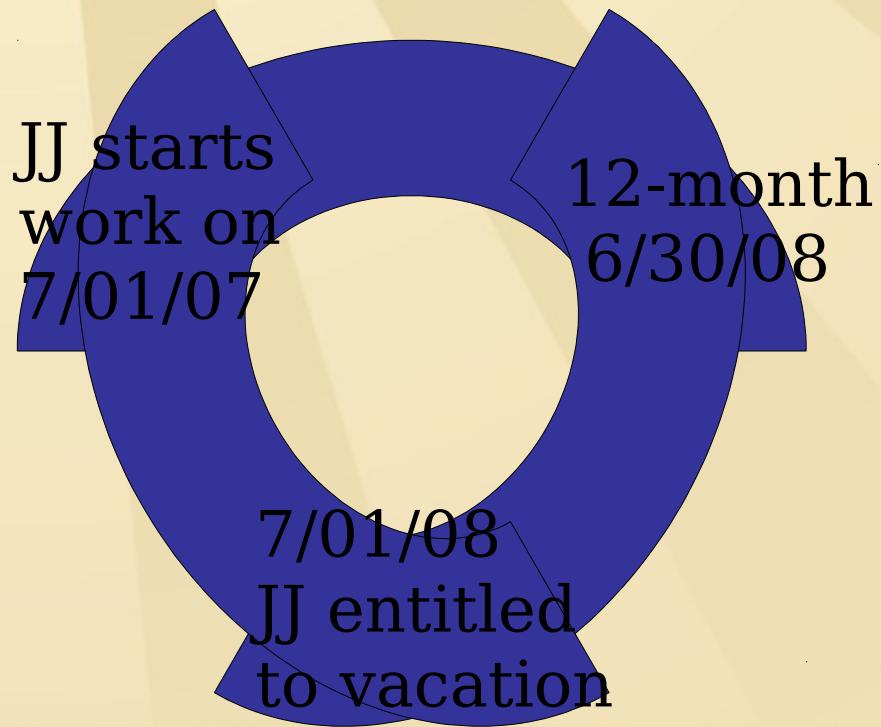
## (29 C.F.R. § 4.173(c)(1))

- Are vested and become due after the employee's **anniversary date**
- Need not be paid immediately after the anniversary date, but must be discharged before, whichever occurs first:
  - ☒ The next anniversary date;
  - ☒ The completion of the contract; or
  - ☒ The employee terminates employment



# Anniversary Date (12-months of Service)

- Employee eligible for vacation benefits
- Contractor who employs employee on anniversary date owes vacation
- Paid at hourly rate in effect in workweek vacation is taken
- H&W benefits due under “fixed cost” requirements



# “Continuous Service”

## (29 C.F.R. § 4.173(a)-(b))

- Determines employee's eligibility for vacation benefits
- Is determined by total length of time:
  - Present contractor in any capacity, and/or
  - Predecessor contractors in performance of similar contract functions at same facility
- Contractor's liability determined by WD



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# Continuous Service Examples (WD – 1-week vacation after 1-year)

- Present contractor -employee “in any capacity”
  - 6-months on SCA-contract
  - 6-months on “commercial” work
- Present and predecessor contractors
  - 16-months for predecessor at same facility
  - 8-months for present contractor
- Employee eligible for vacation benefits



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# Incumbent Contractor's List

## (29 C.F.R. §§ 4.6(l)(2) & 4.173(d)(2))

- Must be furnished to contracting officer 10 days prior to contract completion
  - Identifies service employees on last month's payroll
  - Provides anniversary date of employment
  - Difficulty in obtaining list does not relieve contractor to provide vacation benefits
- 



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# Holiday Fringe Benefits

## (29 C.F.R. § 4.174)

- Employee entitled to holiday pay if works in the holiday workweek
- Employee not entitled to holiday pay if holiday not named in WD (*i.e.*, government closed by proclamation)
- Paid holidays can be traded for another day off if communicated to employees



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# Equivalent Fringe Benefits

## (29 C.F.R. § 4.177)

Contractor may dispose of FBs:

- By furnishing the benefits listed in WD, or
- Furnish equivalent combinations of *bona fide* FBs, or
- Make equivalent cash payments
  - Equal in cost
  - Separately stated in employer's record
  - Not used to offset wage requirements



# Furnishing Cash Equivalents

## (29 C.F.R. § 4.177(c))

- For FBs listed in weekly amounts (\$60), divide amount by hours worked (40):
  - $\$60/40 \text{ hours} = \$1.50 \text{ per hour}$
  
- For FBs listed in non-cash amounts (one week paid vacation), multiply wage (\$10) by vacation (40 hours) and divide by annual non-overtime hours (2080 hours):
  - $\$10 \times 40 \text{ hours} = \$400/2080 \text{ hours} = \$0.19 \text{ per hour}$



# Part-time Employees

## (29C.F.R. § 4.176)

- Entitled to proportionate amount
  - Maximum: Vacation/Holidays = 40/8 hours
  - Part-time employee works 20 hours per week:
    - Entitled to  $\frac{1}{2}$  week of vacation, or 20 hours
    - Entitled to  $\frac{1}{2}$  holiday pay, or 4 hours
    - Must receive full amount of H&W FBs
- 



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# SCA Overtime Compliance



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# Overtime Pay

- SCA does not provide premium rates for overtime hours of work, but recognizes other Federal laws that do
  - Fair Labor Standards Act (FLSA) (29 U.S.C. § 201, et seq.) has broadest application
  - Contract Work Hours and Safety Standards Act (CWHSSA) (40 U.S.C. §§ 327-332) applies to contracts in excess of \$100,000 that employ “laborers” and “mechanics”



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# Overtime Pay

- Determined in same manner under both laws:
  - Calculated at 1-1/2 times employee's basic hourly rate of pay for all hours worked over 40 in a workweek
  - Liquidated damages can be assessed under CWHSSA at \$10 per day when overtime not properly paid



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# Overtime Compliance with “Fixed cost” H&W Benefits

An employee worked 44 hours on a covered contract as a janitor at a WD rate of \$15 plus \$3.59 in “fixed cost” H&W FBs per hour.

40 hours X \$3.59	= \$143.60 H&W FBs
44 hours X \$15.00	= \$660.00 S/T Wages
<u>4 hours X \$15.00 x 1/2</u>	<u>= \$ 30.00 O/T Pay</u>
Total	\$833.60



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# Overtime Compliance with the “Average Cost” H&W Benefits

An employee worked 44 hours on a covered contract as a janitor at a WD rate of \$15 plus \$3.59 in “average cost” H&W FBs per hour.

$$44 \text{ hours} \times \$3.59 = \$157.96 \text{ H\&W FBs}$$

$$44 \text{ hours} \times \$15.00 = 660.00 \text{ Wages}$$

$$\underline{4 \text{ hours} \times \$15.00 \times \frac{1}{2} = 30.00 \text{ Overtime Pay}}$$

$$\text{Total} = \$847.96$$



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# Overtime Computation where Employee Employed at 2 Rates

During a workweek, an employee works 20 hours as an Electrician at \$22.00 an hour and 24 hours as a Painter at \$20.00 an hour.

Electrician \$22.00 X 20 hours = \$440.00

Painter      \$20.00 X 24 hours = 480.00

Total      Straight time wages      \$920.00

\$920/44 hours = \$20.91 (regular rate)

Overtime due: \$20.91 X 1/2 x 4 hours = \$41.82



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# Computing Liquidated Damages under CWHSSA

Are computed at \$10 per day per violation:

	S	M	T	W	T	F	S	Total
<b>Regular Time</b>	0	10	12	13	9	8	3	
<b>55</b>								

15 weekly hours of overtime were worked on 3 calendar days (Thursday, Friday, Saturday) without payment of overtime. Liquidated damages computed at \$30.



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# Recordkeeping Requirements

## (29 C.F.R. §§ 4.6(g), 4.185)

- Contractor and each subcontractor must maintain for each employee for 3 years:
  - Name, address and social security number
  - Work classification, wages and benefits
  - Daily/weekly compensation and hours worked, and any payroll deductions
  - Length of service list of the predecessor contractor



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# SCA Labor Standards

## ■ Contract Stipulations:

- Prevailing wages to be paid to various classes of service employees
- Fringe benefits to be furnished
- Safety and health provisions
- Notice of required compensation to be furnished to employees



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# Authority and Reasons for SCA Investigations

- DOL has sole enforcement authority under SCA
- WHD may conduct investigations for a number of reasons
  - Reason is not disclosable
  - Many are initiated by complaints
- Complaints are confidential



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# Compliance Issues

- An investigation will generally identify and examine the following issues:
  - Are SCA stipulations included in contract?
  - Does contract have correct WD?
  - Are the SCA poster and WD, including any conformance actions, posted at the site or made available to employees?
  - Does WD contain necessary classifications?



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# Compliance Issues (cont'd)

- More investigation issues:
  - ☒ Is a conformance necessary?
  - ☒ Are employees properly classified?
  - ☒ Are fringe benefits being properly paid?
  - ☒ Is “overtime” correctly paid under the FLSA or CWHSSA, if appropriate?
  - ☒ Has employer kept accurate payroll records?



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# Executive Order 13495

## *Nondisplacement of Qualified Workers Under Service Contracts*

- The Department of Labor, Wage and Hour Division has issued a final rule to implement Executive Order 13495, **Nondisplacement of Qualified Workers Under Service Contracts**.
- The Order and the final rule require contractors and subcontractors who are awarded a federal service contract to provide the same or similar services at the same location to, in most circumstances, offer employment to the predecessor contractor's employees in positions for which they are qualified. Successor contractors are allowed to reduce the size of the workforce and to give first preference to certain of their current employees.



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# Executive Order 13495 cont'd

- The Executive Order and the final rule mandate the inclusion of a contract clause requiring (subject to the terms and conditions of the Executive Order and the final rule) the successor contractor and its subcontractors to offer those employees employed under the predecessor contract, whose employment will be otherwise terminated as a result of the award of the successor contract, a right of first refusal of employment under the successor contract in positions for which they are qualified.
- The final rule will be effective once the Federal Acquisition Regulatory Council (FARC) issues regulations for the inclusion of the nondisplacement contract clause in covered Federal solicitations and contracts, as required by the Executive Order.



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